

STATE OF SOUTH DAKOTA  
OFFICE OF PROCUREMENT MANAGEMENT  
523 EAST CAPITOL AVENUE  
PIERRE, SOUTH DAKOTA 57501-3182

**Executive Secretary Board-Psychologists Examiners**  
PROPOSALS ARE DUE NO LATER THAN April 24, 2020 5:00 PM CDT

RFP #1967

BUYER: South Dakota Board of  
Psychologists Examiners

POC: Dr. Thomas Stanage  
[Thomas.Stanage@lcbhs.net](mailto:Thomas.Stanage@lcbhs.net)

**READ CAREFULLY**

FIRM NAME: \_\_\_\_\_ AUTHORIZED SIGNATURE: \_\_\_\_\_

ADDRESS: \_\_\_\_\_ TYPE OR PRINT NAME: \_\_\_\_\_

CITY/STATE: \_\_\_\_\_ TELEPHONE NO: \_\_\_\_\_

ZIP (9 DIGIT): \_\_\_\_\_ FAX NO: \_\_\_\_\_

FEDERAL TAX ID#: \_\_\_\_\_ E-MAIL: \_\_\_\_\_

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**PRIMARY CONTACT INFORMATION**

CONTACT NAME: \_\_\_\_\_ TELEPHONE NO: \_\_\_\_\_

FAX NO: \_\_\_\_\_ E-MAIL: \_\_\_\_\_

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## 1.0 GENERAL INFORMATION

### 1.1 PURPOSE OF REQUEST FOR PROPOSAL (RFP)

The purpose of this RFP is to solicit an entity to serve as the executive secretary for the South Dakota Board of Psychologists Examiners for provision of administrative services. Administrative services encompass all aspects of licensure including credentialing, continuing education, disciplinary actions, licensure revocation and acting as a consultant.

### 1.2 ISSUING OFFICE AND RFP REFERENCE NUMBER

The South Dakota Board of Psychologists is the issuing office for this document and all subsequent addenda relating to it, on behalf of the State of South Dakota, Department of Social Services. The reference number for the transaction is RFP #1967. Refer to this number on all proposals, correspondence, and documentation relating to the RFP.

Please refer to the Department of Social Services website link <http://dss.sd.gov/keyresources/rfp.aspx> for the RFP, any related questions/answers, changes to schedule of activities, amendments, etc.

### 1.3 SCHEDULE OF ACTIVITIES (SUBJECT TO CHANGE)

RFP Publication	<u>March 10, 2020</u>
Deadline for Submission of Written Inquiries	<u>March 25, 2020</u>
Responses to Offeror Questions	<u>April 03, 2020</u>
Proposal Submission	<u>April 24, 2020</u>
Anticipated Award Decision/Contract Negotiation	<u>May 15, 2020</u>

### 1.4 SUBMITTING YOUR PROPOSAL

All proposals must be completed and received in the South Dakota Board of Psychologists Examiners by the date and time indicated in the Schedule of Activities.

Proposals received after the deadline will be late and ineligible for consideration.

An original, three (3) identical copies, and one (1) digital, Portable Document Format (PDF) copy loaded on a USB flashdrive of the proposal, all attachments, and the cost proposal(s) must be submitted.

All proposals must be signed in ink by an officer of the offeror legally authorized to bind the offeror to the proposal, and sealed in the form intended by the respondent. Proposals that are not properly signed may be rejected. The sealed envelope must be marked with the appropriate RFP Number and Title. The words "Sealed Proposal Enclosed" must be prominently denoted on the outside of the shipping container.

**Proposals must be addressed and labeled as follows:**

**Request for Proposal #1967    Proposal Due April 24, 2020**  
**Chair of the South Dakota Board of Psychologists Examiners**  
**Attention: Dr. Thomas Stanage**  
**1028 Walnut Street**  
**Yankton SD 57078**

No punctuation is used in the address. The above address as displayed should be the only information in the address field.

No proposal may be accepted from, or any contract or purchase order awarded to any person, firm or corporation that is in arrears upon any obligations to the State of South Dakota, or that otherwise may be deemed irresponsible or unreliable by the State of South Dakota.

#### **1.5 CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION – LOWER TIER COVERED TRANSACTIONS**

By signing and submitting this proposal, the offeror certifies that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation, by any Federal department or agency, from transactions involving the use of Federal funds. Where the offeror is unable to certify to any of the statements in this certification, the bidder shall attach an explanation to their offer.

#### **1.6 NON-DISCRIMINATION STATEMENT**

The State of South Dakota requires that all contractors, vendors, and suppliers doing business with any State agency, department, or institution, provide a statement of non-discrimination. By signing and submitting their proposal, the offeror certifies they do not discriminate in their employment practices with regard to race, color, creed, religion, age, sex, ancestry, national origin or disability.

#### **1.7 RESTRICTION OF BOYCOTT OF ISRAEL**

For contractors, vendors, suppliers, or subcontractors with five (5) or more employees who enter into a contract with the State of South Dakota that involves the expenditure of one hundred thousand dollars (\$100,000) or more, by submitting a response to this solicitation or agreeing to contract with the State, the bidder or offeror certifies and agrees that the following information is correct:

The bidder or offeror, in preparing its response or offer or in considering proposals submitted from qualified, potential vendors, suppliers, and subcontractors, or in the solicitation, selection, or commercial treatment of any vendor, supplier, or subcontractor, has not refused to transact business activities, has not terminated business activities, and has not taken other similar actions intended to limit its commercial relations, related to the subject matter of the bid or offer, with a person or entity on the basis of Israeli national origin, or residence or incorporation in Israel or its territories, with the specific intent to accomplish a boycott or divestment of Israel in a discriminatory manner. It is understood and agreed that, if this certification is false, such false certification will constitute grounds for the State to reject the bid or response submitted by the bidder or offeror on this project and terminate any contract awarded based on the bid or response. The successful bidder or offeror further agrees to provide immediate written notice to the contracting executive branch agency if during the term of the contract it no longer complies with this certification and agrees such noncompliance may be grounds for contract termination.

#### **1.8 MODIFICATION OR WITHDRAWAL OF PROPOSALS**

Proposals may be modified or withdrawn by the offeror prior to the established due date and time.

No oral, telephonic, telegraphic or facsimile responses or modifications to informal, formal bids, or Request for Proposals will be considered.

#### **1.9 OFFEROR INQUIRIES**

Offerors may email inquiries concerning this RFP to obtain clarification of requirements. No inquiries will be accepted after March 25, 2020. Email inquiries must be sent to [Thomas.Stanage@lcbhs.net](mailto:Thomas.Stanage@lcbhs.net) with the following wording, exactly as written, in the subject line: **RFP #1967 Questions**.

The Board of Psychologists Examiners will respond to offerors' inquiries by posting offeror aggregated questions and Board responses on the DSS website at <http://dss.sd.gov/keyresources/rfp.aspx> no later than April 3, 2020. For expediency, the Board may combine similar questions. Offerors may not rely on any other statements, either of a written or oral nature, that alter any specification or other term or condition of this RFP. Offerors will be notified in the same manner as indicated above regarding any modifications to this RFP.

#### **1.10 PROPRIETARY INFORMATION**

The proposal of the successful offeror(s) becomes public information. Proprietary information can be protected under limited circumstances such as client lists and non-public financial statements. Pricing and service elements are not considered proprietary. An entire proposal may not be marked as proprietary. ***Offerors must clearly identify in the Executive Summary and mark in the body of the proposal any specific proprietary information they are requesting to be protected.*** The Executive Summary must contain specific justification explaining why the information is to be protected. Proposals may be reviewed and evaluated by any person at the discretion of the State. All materials submitted become the property of the State of South Dakota and may be returned only at the State's option.

#### **1.11 LENGTH OF CONTRACT**

The contract resulting from this RFP will be issued for a period of one (1) year, June 1, 2020 to May 31, 2021, with the option for renewal for up to four (4), one (1) year extensions at the discretion of the Board of Psychologists Examiners.

#### **1.12 GOVERNING LAW**

Venue for any and all legal action regarding or arising out of the transaction covered herein shall be solely in Hughes County, State of South Dakota. The laws of South Dakota shall govern this transaction.

#### **1.13 DISCUSSIONS WITH OFFERORS (ORAL PRESENTATION/NEGOTIATIONS)**

An oral presentation by an offeror to clarify a proposal may be required at the sole discretion of the State. However, the State may award a contract based on the initial proposals received without discussion with the offeror. If oral presentations are required, they will be scheduled after the submission of proposals. Oral presentations will be made at the offeror's expense.

This process is a Request for Proposal/Competitive Negotiation process. Each Proposal shall be evaluated, and each respondent shall be available for negotiation meetings at the State's request. The State reserves the right to negotiate on any and/or all components of every proposal submitted. From the time the proposals are submitted until the formal award of a contract, each proposal is considered a working document and as such, will be kept confidential. The negotiation discussions will also be held as confidential until such time as the award is completed.

## **2.0 STANDARD AGREEMENT TERMS AND CONDITIONS**

Any contract or agreement resulting from this RFP will include, at minimum, the State's standard terms and conditions as seen in Attachment A. As part of the negotiation process, the contract terms listed in Attachment A may be altered or deleted. The offeror should indicate in their response any issues they have with any specific contract terms. If the offeror does not indicate any contract term issues, then the State will assume the terms are acceptable.

### **3.0 SCOPE OF WORK**

**Please provide a detailed response and demonstrate how the offeror meets the following requirements:**

- 3.1 Interpret, implement, and administer federal and state statutes and administrative rules to ensure compliance and protect consumers.
- 3.2 Provide leadership to the Board to enhance continuity of operations.
  - 3.2.1 Advise the Board of laws, rules, issues, investigations, and all other aspects to keep them apprised and updated;
  - 3.2.2 Establish goals and priorities; and
  - 3.2.3 Coordinate Board meetings and ensure that Board directives are carried out.
  - 3.2.4 Arrange Board information packets, record meeting minutes, and provide general support to Board activities.
- 3.3 Provide staff structure to process all aspects of the licensure process, including issuing license, renewal and any actions against the license according to South Dakota law and Board policy.
  - 3.3.1 Assist credentialing agencies with application screenings and eligibility determinations;
  - 3.3.2 Approve initial and continuing applications for licensure and renewal;
  - 3.3.3 Review and approve continuing education courses attended by licensees;
  - 3.3.4 Provide technical assistance to licensees and the public by answering questions regarding license laws and practice;
  - 3.3.5 Coordinate and evaluate licensing activity with other states for reciprocity purposes;
  - 3.3.6 Write and publish informational and educational literature as needed; and
  - 3.3.7 Determine if the new applicant or applicants for renewal are able to obtain the required professional license with regard to compliance with SDCL 25-7A-56.1 – child support arrearages. Provide applicants the contact information for the Division of Child Support (DCS) so they may resolve the issues that are preventing the issuance of their license.
- 3.4 Draft proposed changes in statute or administrative rules, monitor the rule promulgation process, lobby legislators and testify before legislative committees to ensure necessary laws and rules are created, updated, and remain consistent with the education of the profession and for the protection of the public.
- 3.5 Oversee all fiscal activities of the Board to ensure proper control over revenues and expenditures.
  - 3.5.1 Monitor collection and deposits of revenues;
  - 3.5.2 Approve vouchers and expenditures;
  - 3.5.3 Draft preliminary annual budget proposals;
  - 3.5.4 Maintain records and monitor budget;
  - 3.5.5 Prepare and submit statistical reports as directed by the Department of Social Services;

- 3.5.6 Work with Board members to negotiate contracts for legal counsel or other professional services needed by the Board, but outside the Scope of Work and or area of expertise of the Board's executive secretary; and
  - 3.5.7 Utilize State protocols for purchases, reimbursements, travel requests, and other administrative procedures as directed by the Department of Social Services.
- 3.6 Work with the Office of the Attorney General's assigned attorney or contract attorney to investigate, initiate and present complaints against licensees or unlicensed administrators to ensure potential problems are resolved in compliance with applicable policies.
- 3.6.1 Initiate complaints against licensees on behalf of the Board;
  - 3.6.2 Analyze investigative material and evaluate legal procedures with legal counsel;
  - 3.6.3 Present findings and recommendations to the Board or law judge to ensure rule violations are corrected;
  - 3.6.4 Schedule information proceedings and disciplinary hearings;
  - 3.6.5 Administer disciplinary actions on behalf of the Board;
  - 3.6.6 Serve as a resource in complaint proceedings by making reference to pertinent statutes and rules to aid the Board when reviewing complaints for possible violations; and
  - 3.6.7 Provide testimony at court hearings resulting from applicant or licensee appeals and illegal actions of the unlicensed individuals.
- 3.7 Fulfill all administrative needs of the Board to include activities such as:
- 3.7.1 Arranging and facilitating Board meetings;
  - 3.7.2 Handling correspondence;
  - 3.7.3 Maintaining databases, files, and appropriate documentation for all licenses.
- 3.8 As needed, represent the Board at national and regional meetings to learn, understand, and gather and exchange information and monitor national trends for education of the licensees and the protection of the public.
- 3.9 Serve as Board liaison to applicants, licensees, professional associations, insurance companies, other Psychology Boards, government entities, and general population.
- 3.10 Research, gather, analyze, and apprise the Board regarding use and application of new policies and procedures, occupational hazards and safety precautions, and the need for new technologies to enhance the capability of the Board to serve the public.
- 3.11 Evaluate, recommend, and implement technological changes such as website development, computerized testing, e-commerce, national databases, and licensee databases.
- 3.12 Reporting relationships:
- 3.12.1 Typically reports to the Board president and South Dakota Department of Social Services liaison.
  - 3.12.2 Subordinates reporting to the executive secretary include clerical staff and other support staff.

- 3.13 Explain how the Offeror has professional licensing expertise in Human Services, national issues related to psychology work, licensure, knowledge of South Dakota Psychological Association boards, American Psychological Association, Association of State and Provincial Psychologist Boards (ASPPB), statutory provisions, South Dakota Codified Laws, Administrative Rules of South Dakota, and federal statutory provisions relevant to Psychologists.
- 3.14 Describe how the Offeror's experience in licensing of behavioral health or health licensing administration effectively meet the business needs of the Department of Social Services, State of South Dakota, and the Board of Psychologists Examiners.

#### **4.0 PROPOSAL REQUIREMENTS AND COMPANY QUALIFICATIONS**

- 4.1 The offeror is cautioned that it is the offeror's sole responsibility to submit information related to the evaluation categories and that the State of South Dakota is under no obligation to solicit such information if it is not included with the proposal. The offeror's failure to submit such information may cause an adverse impact on the evaluation of the proposal.
- 4.2 **Offeror's Contacts:** Offerors and their agents (including subcontractors, employees, consultants, or anyone else acting on their behalf) must direct all of their questions or comments regarding the RFP, the evaluation, etc. to the point of contact of the buyer of record indicated on the first page of this RFP. Offerors and their agents may not contact any state employee other than the buyer of record regarding any of these matters during the solicitation and evaluation process. Inappropriate contacts are grounds for suspension and/or exclusion from specific procurements. Offerors and their agents who have questions regarding this matter should contact the buyer of record.
- 4.3 The offeror may be required to submit a copy of their most recent independently audited financial statements.
- 4.4 Provide the following information related to at least three previous and current service/contracts performed by the offeror's organization which are similar to the requirements of this RFP. Provide this information for any service/contract that has been terminated, expired or not renewed in the past three years:
  - a. Name, address and telephone number of client/contracting agency and a representative of that agency who may be contacted for verification of all information submitted;
  - b. Dates of the service/contract; and
  - c. A brief, written description of the specific prior services performed and requirements thereof.
- 4.5 The offeror must submit information that demonstrates their availability and familiarity with the locale in which the project (s) are to be implemented.
- 4.6 The offeror must detail examples that document their ability and proven history in handling special project constraints.
- 4.7 The offeror must describe their proposed project management techniques.
- 4.8 If an offeror's proposal is not accepted by the State, the proposal will not be reviewed/evaluated.

#### **5.0 PROPOSAL RESPONSE FORMAT**

- 5.1 An original and three (3) copies shall be submitted.

- 5.1.1 In addition, the offeror must submit one (1) copy of their entire proposal, including all attachments and cost proposal(s), in PDF digital format loaded on a USB flashdrive. Offerors may not send the electronically formatted copy of their proposal via email.
  - 5.1.2 The proposal should be page numbered and should have an index and/or a table of contents referencing the appropriate page number.
- 5.2 All proposals must be organized and tabbed with labels for the following headings:
- 5.2.1 **RFP Form.** The State's Request for Proposal form completed and signed.
  - 5.2.2 **Executive Summary.** The one or two page executive summary is to briefly describe the offeror's proposal. This summary should highlight the major features of the proposal. It must indicate any requirements that cannot be met by the offeror. The reader should be able to determine the essence of the proposal by reading the executive summary. Proprietary information requests should be identified in this section.
  - 5.2.3 **Detailed Response.** This section should constitute the major portion of the proposal and must contain at least the following information:
    - 5.2.3.1 A complete narrative of the offeror's assessment of the work to be performed, the offeror's ability and approach, and the resources necessary to fulfill the requirements. This should demonstrate the offeror's understanding of the desired overall performance expectations.
    - 5.2.3.2 A specific point-by-point response, in the order listed, to each requirement in the RFP as detailed in Sections 3 and 4. The response should identify each requirement being addressed as enumerated in the RFP.
    - 5.2.3.3 A clear description of any options or alternatives proposed.
  - 5.2.4 **Cost Proposal.** Cost will be evaluated independently from the technical proposal. Offerors may submit multiple cost proposals. All costs related to the provision of the required services must be included in each cost proposal offered.
- See section 7.0 for more information related to the cost proposal.

## **6.0 PROPOSAL EVALUATION AND AWARD PROCESS**

- 6.1 After determining that a proposal satisfies the mandatory requirements stated in the Request for Proposal, the evaluator(s) shall use subjective judgment in conducting a comparative assessment of the proposal by considering each of the following criteria listed in order of importance:
  - 6.1.1 Specialized expertise, capabilities, and technical competence as demonstrated by the proposed approach and methodology to meet the project requirements;
  - 6.1.2 Resources available to perform the work, including any specialized services, within the specified time limits for the project;
  - 6.1.3 Record of past performance, including price and cost data from previous projects, quality of work, ability to meet schedules, cost control, and contract administration;
    - 6.1.3.1 Ability and proven history in providing executive, administrative, financial, and government relations services.



- 6.1.4 Proposed project management techniques;
  - 6.1.4.1 Proven project management techniques and skills in the licensing of behavioral health or health licensing administration and familiarity with the profession of Psychology.
- 6.1.5 Availability to the project locale;
- 6.1.6 Ability and proven history in handling special project constraints, and
- 6.1.7 Cost proposal.
- 6.1.8 Familiarity with the project locale;
- 6.2 Experience and reliability of the offeror's organization are considered subjectively in the evaluation process. Therefore, the offeror is advised to submit any information which documents successful and reliable experience in past performances, especially those performances related to the requirements of this RFP.
- 6.3 The qualifications of the personnel proposed by the offeror to perform the requirements of this RFP, whether from the offeror's organization or from a proposed subcontractor, will be subjectively evaluated. Therefore, the offeror should submit detailed information related to the experience and qualifications, including education and training, of proposed personnel.
- 6.4 The State reserves the right to reject any or all proposals, waive technicalities, and make award(s) as deemed to be in the best interest of the State of South Dakota.
- 6.5 **Award:** The requesting agency and the highest ranked offeror shall mutually discuss and refine the scope of services for the project and shall negotiate terms, including compensation and performance schedule.
  - 6.5.1 If the agency and the highest ranked offeror are unable for any reason to negotiate a contract at a compensation level that is reasonable and fair to the agency, the agency shall, either orally or in writing, terminate negotiations with the contractor. The agency may then negotiate with the next highest ranked contractor.
  - 6.5.2 The negotiation process may continue through successive offerors, according to agency ranking, until an agreement is reached or the agency terminates the contracting process.

## 7.0 **COST PROPOSAL**

- 7.1 The cost proposal should encompass all services as specified in Section 3.
- 7.2 Offeror to submit cost proposal stating:
  - 7.2.1 Cost for services performed per month;
  - 7.2.2 Cost of rent per month;
  - 7.2.3 Total annual cost for services and rent combined;
  - 7.2.4 Total for annual miscellaneous expenses as a separate item;
  - 7.2.5 Total contract amount not to exceed stated monthly services, rent, and miscellaneous expenses.
  - 7.2.6 Travel expenses will be reimbursed at State rates; out-of-state travel requires preapproval.

Cost of services per month:	\$
Cost of rent per month:	\$
Total annual cost of services and rent combined:	\$
Annual cost of miscellaneous expenses:	\$
<b>TOTAL CONTRACT AMOUNT:</b>	\$

**Attachment A**

**STATE OF SOUTH DAKOTA  
DEPARTMENT OF SOCIAL SERVICES  
OFFICE OF THE SECRETARY**

**Consultant Contract  
For Consultant Services  
Between**

State of South Dakota  
Department of Social Services  
OFFICE OF THE SECRETARY  
700 Governors Drive  
Pierre, SD 57501-2291

\_\_\_\_\_  
Referred to as Consultant

\_\_\_\_\_  
Referred to as State

**The State hereby enters into a contract (the "Agreement" hereinafter) for consultant services with the Consultant. While performing services hereunder, Consultant is an independent contractor and not an officer, agent, or employee of the State of South Dakota.**

1. **CONSULTANT'S South Dakota Vendor Number is** \_\_\_\_\_.
2. PERIOD OF PERFORMANCE:
  - A. This Agreement shall be effective as of June 1, 2020 and shall end on May 31, 2021, unless sooner terminated pursuant to the terms hereof.
  - B. Agreement is the result of request for proposal process, RFP #\_\_\_\_\_
3. PROVISIONS:
  - A. The Purpose of this Consultant contract:
    - 1.
    2. Does this Agreement involve Protected Health Information (PHI)? YES ( ) NO ( X )  
If PHI is involved, a Business Associate Agreement must be attached and is fully incorporated herein as part of the Agreement (refer to attachment) .
    3. The Consultant will use state equipment, supplies or facilities.
  - B. The Consultant agrees to perform the following services (add an attachment if needed.):
    - 1.
  - C. The State agrees to:
    - 1.
    2. Make payment for services upon satisfactory completion of services and receipt of bill. Payment will be in accordance with SDCL 5-26.
    3. Will the State pay Consultant expenses as a separate item?  
YES ( ) NO ( X )  
If YES, expenses submitted will be reimbursed as identified in this Agreement.

D. The TOTAL CONTRACT AMOUNT will not exceed \$ .

4. **BILLING:**

Consultant agrees to submit a bill for services within (30) days following the month in which services were provided. Consultant will prepare and submit a monthly bill for services. Consultant agrees to submit a final bill within 30 days of the Agreement end date to receive payment for completed services. If a final bill cannot be submitted in 30 days, then a written request for extension of time and explanation must be provided to the State.

5. **TECHNICAL ASSISTANCE:**

The State agrees to provide technical assistance regarding Department of Social Services rules, regulations and policies to the Consultant and to assist in the correction of problem areas identified by the State's monitoring activities.

6. **LICENSING AND STANDARD COMPLIANCE:**

The Consultant agrees to comply in full with all licensing and other standards required by Federal, State, County, City or Tribal statute, regulation or ordinance in which the service and/or care is provided for the duration of this Agreement. The Consultant will maintain effective internal controls in managing the federal award. Liability resulting from noncompliance with licensing and other standards required by Federal, State, County, City or Tribal statute, regulation or ordinance or through the Consultant's failure to ensure the safety of all individuals served is assumed entirely by the Consultant.

7. **ASSURANCE REQUIREMENTS:**

The Consultant agrees to abide by all applicable provisions of the following: Byrd Anti Lobbying Amendment (31 USC 1352), Executive orders 12549 and 12689 (Debarment and Suspension), Drug-Free Workplace, Executive Order 11246 Equal Employment Opportunity, Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968, Section 504 of the Rehabilitation Act of 1973, Americans with Disabilities Act of 1990, Title IX of the Education Amendments of 1972, Drug Abuse Office and Treatment Act of 1972, Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, Age Discrimination Act of 1975, Pro-Children Act of 1994, Hatch Act, Health Insurance Portability and Accountability Act (HIPAA) of 1996 as amended, Clean Air Act, Federal Water Pollution Control Act, Charitable Choice Provisions and Regulations, Equal Treatment for Faith-Based Religions at Title 28 Code of Federal Regulations Part 38, the Violence Against Women Reauthorization Act of 2013 and American Recovery and Reinvestment Act of 2009, as applicable; and any other nondiscrimination provision in the specific statute(s) under which application for Federal assistance is being made; and the requirements of any other nondiscrimination statute(s) which may apply to the award.

8. **RESTRICTION OF BOYCOTT OF ISRAEL:**

Pursuant Executive Order 2020-01 for contractors, vendors, supplies, or subcontracts with five (5) or more employees who enter into a contract with the State of South Dakota that involves the expenditure of one hundred thousand dollars (\$100,000) or more - by signing this contract, the Consultant certifies and agrees that it has not refused to transact business activities, has not terminated business activities, and has not taken other similar actions intended to limit any commercial relations as related to the subject matter of the contract with any person or entity that is either the State of Israel, a company doing business in or with Israel, or a company authorized by, licensed by, or organized under the laws of the State of Israel to do business, with the specific intent to accomplish a boycott or divestment of Israel in a discriminatory manner. It is understood and agreed that, if this certification is false, such false certification will constitute grounds for the State of South Dakota to terminate this contract. The Consultant further agrees to provide immediate written notice to the State of South Dakota if during the term of the contract it no longer complies with this certification and agrees such noncompliance may be grounds for contract termination.

9. **RETENTION AND INSPECTION OF RECORDS:**

The Consultant agrees to maintain or supervise the maintenance of records necessary for the proper and efficient operation of the program, including records and documents regarding applications, determination of eligibility (when applicable), the provision of services, administrative costs, statistical, fiscal, other records, and information necessary for reporting and accountability required by the State. The Consultant shall retain such records for a period of six years from the date of submission of the final expenditure report. If such records are under pending audit, the Consultant agrees to hold such records for a longer period upon notification from the State. The State, through any authorized representative, will have access to and the right to examine and copy all records, books, papers or documents related to services rendered under this Agreement. State Proprietary Information retained in Consultant's secondary and backup systems will remain fully subject to the obligations of confidentiality stated herein until such information is erased or destroyed in accordance with Consultant's established record retention policies.

All payments to the Consultant by the State are subject to site review and audit as prescribed and carried out by the State. Any over payment of this Agreement shall be returned to the State within thirty days after written notification to the Consultant.

10. **WORK PRODUCT:**

Consultant hereby acknowledges and agrees that all reports, plans, specifications, technical data, drawings, software system programs and documentation, procedures, files, operating instructions and procedures, source code(s) and documentation, including those necessary to upgrade and maintain the software program, State Proprietary Information, as defined in the Confidentiality of Information paragraph herein, state data, end user data, Protected Health Information as defined in 45 CFR 160.103, and all information contained therein provided to the State by the Consultant in connection with its performance of service under this Agreement shall belong to and is the property of the State and will not be used in any way by the Consultant without the written consent of the State.

Paper, reports, forms, software programs, source code(s) and other materials which are a part of the work under this Agreement will not be copyrighted without written approval of the State. In the unlikely event that any copyright does not fully belong to the State, the State nonetheless reserves a royalty-free, non-exclusive, and irrevocable license to reproduce, publish, and otherwise use, and to authorize others to use, any such work for government purposes.

Consultant agrees to return all information received from the State to State's custody upon the end of the term of this Agreement, unless otherwise agreed in a writing signed by both parties.

11. **TERMINATION:**

This Agreement may be terminated by either party hereto upon thirty (30) days written notice. In the event the Consultant breaches any of the terms or conditions hereof, this Agreement may be terminated by the State for cause at any time, with or without notice. Upon termination of this Agreement, all accounts and payments shall be processed according to financial arrangements set forth herein for services rendered to date of termination.

12. **FUNDING:**

This Agreement depends upon the continued availability of appropriated funds and expenditure authority from the Legislature for this purpose. If for any reason the Legislature fails to appropriate funds or grant expenditure authority, or funds become unavailable by operation of the law or federal funds reduction, this Agreement will be terminated by the State. Termination for any of these reasons is not a default by the State nor does it give rise to a claim against the State.

13. **ASSIGNMENT AND AMENDMENTS:**

This Agreement may not be assigned without the express prior written consent of the State. This Agreement may not be amended except in writing, which writing shall be expressly identified as a part hereof, and be signed by an authorized representative of each of the parties hereto.

14. **CONTROLLING LAW:**

This Agreement shall be governed by and construed in accordance with the laws of the State of South Dakota, without regard to any conflicts of law principles, decisional law, or statutory provision which would require or permit the application of another jurisdiction's substantive law. Venue for any lawsuit pertaining to or affecting this Agreement shall be resolved in the Circuit Court, Sixth Judicial Circuit, Hughes County, South Dakota.

15. **SUPERCESSION:**

All prior discussions, communications and representations concerning the subject matter of this Agreement are superseded by the terms of this Agreement, and except as specifically provided herein, this Agreement constitutes the entire agreement with respect to the subject matter hereof.

16. **IT STANDARDS:**

Any software or hardware provided under this Agreement will comply with state standards which can be found at <http://bit.sd.gov/standards/>.

17. **SEVERABILITY:**

In the event that any provision of this Agreement shall be held unenforceable or invalid by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision of this Agreement, which shall remain in full force and effect.

18. **NOTICE:**

Any notice or other communication required under this Agreement shall be in writing and sent to the address set forth above. Notices shall be given by and to the Division being contracted with on behalf of the State, and by the Consultant, or such authorized designees as either party may from time to time designate in writing. Notices or communications to or between the parties shall be deemed to have been delivered when mailed by first class mail, provided that notice of default or termination shall be sent by registered or certified mail, or, if personally delivered, when received by such party.

19. **SUBCONTRACTORS:**

The Consultant may not use subcontractors to perform the services described herein without express prior written consent from the State. The State reserves the right to reject any person from the Agreement presenting insufficient skills or inappropriate behavior.

The Consultant will include provisions in its subcontracts requiring its subcontractors to comply with the applicable provisions of this Agreement, to indemnify the State, and to provide insurance coverage for the benefit of the State in a manner consistent with this Agreement. The Consultant will cause its subcontractors, agents, and employees to comply with applicable federal, state and local laws, regulations, ordinances, guidelines, permits and requirements and will adopt such review and inspection procedures as are necessary to assure such compliance. The State, at its option, may require the vetting of any subcontractors. The Consultant is required to assist in this process as needed.

20. **STATE'S RIGHT TO REJECT:**

The State reserves the right to reject any person or entity from performing the work or services contemplated by this Agreement, who present insufficient skills or inappropriate behavior.

21. **HOLD HARMLESS:**

The Consultant agrees to hold harmless and indemnify the State of South Dakota, its officers, agents and employees, from and against any and all actions, suits, damages, liability or other proceedings which may arise as the result of performing services hereunder. This section does not require the Consultant to be responsible for or defend against claims or damages arising solely from errors or omissions of the State, its officers, agents or employees.

22. INSURANCE:

Before beginning work under this Agreement, Consultant shall furnish the State with properly executed Certificates of Insurance which shall clearly evidence all insurance required in this Agreement. The Consultant, at all times during the term of this Agreement, shall obtain and maintain in force insurance coverage of the types and with the limits listed below. In the event a substantial change in insurance, issuance of a new policy, cancellation or nonrenewal of the policy, the Consultant agrees to provide immediate notice to the State and provide a new certificate of insurance showing continuous coverage in the amounts required. Consultant shall furnish copies of insurance policies if requested by the State.

A. Commercial General Liability Insurance:

Consultant shall maintain occurrence-based commercial general liability insurance or an equivalent form with a limit of not less than \$1,000,000 for each occurrence. If such insurance contains a general aggregate limit, it shall apply separately to this Agreement or be no less than two times the occurrence limit.

B. Business Automobile Liability Insurance:

Consultant shall maintain business automobile liability insurance or an equivalent form with a limit of not less than \$500,000 for each accident. Such insurance shall include coverage for owned, hired, and non-owned vehicles.

C. Worker's Compensation Insurance:

Consultant shall procure and maintain Workers' Compensation and employers' liability insurance as required by South Dakota law.

D. Professional Liability Insurance:

Consultant agrees to procure and maintain professional liability insurance with a limit not less than \$1,000,000.

(Medical Health Professional shall maintain current general professional liability insurance with a limit of not less than one million dollars for each occurrence and three million dollars in the aggregate. Such insurance shall include South Dakota state employees as additional insureds in the event a claim, lawsuit, or other proceeding is filed against a state employee as a result of the services provided pursuant to this Agreement. If insurance provided by Medical Health Professional is provided on a claim made basis, then Medical Health Professional shall provide "tail" coverage for a period of five years after the termination of coverage.)

23. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY, AND VOLUNTARY EXCLUSION:

Consultant certifies, by signing this Agreement, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by the federal government or any state or local government department or agency. Consultant further agrees that it will immediately notify the State if during the term of this Agreement either it or its principals become subject to debarment, suspension or ineligibility from participating in transactions by the federal government, or by any state or local government department or agency.

24. CONFLICT OF INTEREST:

Consultant agrees to establish safeguards to prohibit employees or other persons from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain as contemplated by SDCL 5-18A-17 through 5-18A-17.6. Any potential conflict of interest must be disclosed in writing. In the event of a conflict of interest, the Consultant expressly agrees to be bound by the conflict resolution process set forth in SDCL 5-18A-17 through 5-18A-17.6.

**25. CONFIDENTIALITY OF INFORMATION:**

For the purpose of the sub-paragraph, "State Proprietary Information" shall include all information disclosed to the Consultant by the State. Consultant acknowledges that it shall have a duty to not disclose any State Proprietary Information to any third person for any reason without the express written permission of a State officer or employee with authority to authorize the disclosure. Consultant shall not: (i) disclose any State Proprietary Information to any third person unless otherwise specifically allowed under this Agreement; (ii) make any use of State Proprietary Information except to exercise rights and perform obligations under this Agreement; (iii) make State Proprietary Information available to any of its employees, officers, agents or consultants except those who have agreed to obligations of confidentiality at least as strict as those set out in this Agreement and who have a need to know such information. Consultant is held to the same standard of care in guarding State Proprietary Information as it applies to its own confidential or proprietary information and materials of a similar nature, and no less than holding State Proprietary Information in the strictest confidence. Consultant shall protect confidentiality of the State's information from the time of receipt to the time that such information is either returned to the State or destroyed to the extent that it cannot be recalled or reproduced. State Proprietary Information shall not include information that (i) was in the public domain at the time it was disclosed to Consultant; (ii) was known to Consultant without restriction at the time of disclosure from the State; (iii) that is disclosed with the prior written approval of State's officers or employees having authority to disclose such information; (iv) was independently developed by Consultant without the benefit or influence of the State's information; (v) becomes known to Consultant without restriction from a source not connected to the State of South Dakota. State's Proprietary Information shall include names, social security numbers, employer numbers, addresses and all other data about applicants, employers or other clients to whom the State provides services of any kind. Consultant understands that this information is confidential and protected under applicable State law at SDCL 1-27-1.5, modified by SDCL 1-27-1.6, SDCL 28-1-29, SDCL 28-1-32, and SDCL 28-1-68 as applicable federal regulation and agrees to immediately notify the State if the information is disclosure, either intentionally or inadvertently. The parties mutually agree that neither of them shall disclose the contents of the Agreement except as required by applicable law or as necessary to carry out the terms of the Agreement or to enforce that party's rights under this Agreement. Consultant acknowledges that the State and its agencies are public entities and thus are bound by South Dakota open meetings and open records laws. It is therefore not a breach of this Agreement for the State to take any action that the State reasonably believes is necessary to comply with the South Dakota open records or open meetings laws. If work assignments performed in the course of this Agreement require additional security requirements or clearance, the Consultant will be required to undergo investigation.

**26. REPORTING PROVISION:**

Consultant agrees to report to the State any event encountered in the course of performance of this Agreement which results in injury to any person or property, or which may otherwise subject Consultant, or the State of South Dakota or its officers, agents or employees to liability. Consultant shall report any such event to the State immediately upon discovery.

Consultant's obligation under this section shall only be to report the occurrence of any event to the State and to make any other report provided for by their duties or applicable law. Consultant's obligation to report shall not require disclosure of any information subject to privilege or confidentiality under law (e.g., attorney-client communications). Reporting to the State under this section shall not excuse or satisfy any obligation of Consultant to report any event to law enforcement or other entities under the requirements of any applicable law.



27. AUTHORIZED SIGNATURES:

In witness hereto, the parties signify their agreement by affixing their signatures hereto.

\_\_\_\_\_  
Consultant Signature \_\_\_\_\_ Date \_\_\_\_\_

\_\_\_\_\_  
Consultant Printed Name \_\_\_\_\_

\_\_\_\_\_  
Board Member Signature \_\_\_\_\_ Date \_\_\_\_\_

\_\_\_\_\_  
Board Member Printed Name \_\_\_\_\_ Date \_\_\_\_\_

\_\_\_\_\_  
State - DSS Chief Financial Officer Laurie Mikkonen \_\_\_\_\_ Date \_\_\_\_\_

\_\_\_\_\_  
State - DSS Deputy Secretary Brenda Tidball-Zeltinger \_\_\_\_\_ Date \_\_\_\_\_

**State Agency Coding:**

CFDA #	_____	_____	_____	_____
Company	_____	_____	_____	_____
Account	_____	_____	_____	_____
Center Req	_____	_____	_____	_____
Center User	_____	_____	_____	_____
Dollar Total	_____	_____	_____	_____

DSS Program Contact Person \_\_\_\_\_  
Phone \_\_\_\_\_

DSS Fiscal Contact Person Contract Accountant  
Phone 605 773-3586

Consultant Program Contact Person \_\_\_\_\_  
Phone \_\_\_\_\_  
Consultant Program Email Address \_\_\_\_\_

Consultant Fiscal Contact Person \_\_\_\_\_  
Phone \_\_\_\_\_  
Consultant Fiscal Email Address \_\_\_\_\_

**SDCL 1-24A-1 states that a copy of all consulting contracts shall be filed by the State agency with the State Auditor within five days after such contract is entered into and finally approved by the contracting parties. For further information about consulting contracts, see the State Auditor's policy handbook.**